-1608

NO. 73-1608

FILED

APR 26 19

MICHAEL RODAK, JR.

IN THE SUPREME COURT

OF THE UNITED STATES
October Term, 1973

RICHARD A. THIBADEAU, SR., PRO SE

Petitioner

vs.

CLYDE HENLEY

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Richard A.Thibadeau, Sr.
PRO SE
2304 Spring Creek Road
Decatur, Georgia 30033

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PETITION FOR CERTIORARI

The petitioner, Richard A. Thibadeau, Sr., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on February 12, 1974.

OPINIONS BELOW

The judgment of the Fifth Circuit Court of Appeals in this case is unreported. It is reprinted in the appendix hereto. [Appendix A] The judgment and opinion of the District Court of the United States for the Northern District Court of Georgia is unreported. The judgment and opinion for the United States District Court for the Northern District of Georgia is reprinted in the appendix hereto. [Appendix B] The basic decision involved in this appli-

cation is the initial opinion and judgment by the United States District Court for the Northern District of Georgia which denied the relief requested in the petition herein. The order and judgment of the United States District Court for the Northern District of Georgia was entered without a hearing and for its reason stated that the District Court was without jurisdiction of the subject matter and, briefly stated, denied that the federal courts had jurisdiction over matters which had their inception in the state courts.

The United States Court of Appeals, Fifth Circuit, affirmed the District Court order. Three justices of that court concurred, per curiam, and affirmed the District Court based on the transcript of record from the

United States District Court for the Northern District of Georgia, and was taken under submission by the court upon the record and briefs on file without a hearing.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1). The judgment of the Court of Appeals was entered on February 12, 1974 [Appendix A]; rehearing being denied on March 14, 1974 [Appendix C].

QUESTIONS PRESENTED

Petitioner filed in the Superior Court of DeKalb County, Stone Mountain Judicial Circuit, State of Georgia, Quo Warranto proceedings questioning the eligibility of respondent Clyde Henley to hold public office. The Quo Warranto proceedings were duly filed, entered of record, service was perfected upon re-

spondent by the Sheriff of the said county, and leave to file the said proceedings were duly granted by the Judge of the Superior Court of DeKalb County. Without notice to your petitioner and without the benefit of a hearing, petitioner's quo warranto proceedings were dismissed. [Appendix D]. An appeal to the Supreme Court of Georgia by your petitioner was based upon the denial of the due process clause of the Fourteenth Amendment of the Constitution of the United States in that he was not afforded his day in court to introduce evidence, elicit testimony, and to set forth his cause of action.

Upon motion by respondent Clyde Henley, the Supreme Court of the State of Georgia consolidated the petitioner's cause of action with that of another

party, Holmes Pyles, and the Supreme Court of Georgia ruled on Holmes Pyles' case, denied the hearing to your petitioner, and did not rule on petitioner's right as guaranteed to him under the Fourteenth Amendment to his day in court. The United States District Court assumed that petitioner's cause of action was based on the same subject matter and of the same interest and same legal principles of that of Holmes Pyles. This assumption being void of basis. Under the circumstances, was petitioner deprived of rights protected by the:

(1) due process clause of the Fourteenth Amendment in that he was deprived of a day in court?

(2) due process clause of the Fourteenth Amendment in that the Supreme Court of Georgia ignored

petitioner's plea for a hearing on the due process clause?

3. due process and equal protection clause of the Fourteenth Amendment to the United States Constitution in that petitioner was not allowed to introduce into evidence respondent Clyde Henley's total criminal record which consisted not only of a robbery conviction in the State of Georgia in 1941, but three larceny convictions in 1945 in the State of Georgia, and an armed robbery conviction in the State of Florida in 1947?

4. whether the Supreme Court of Georgia can assume facts to exist, make a ruling thereon, preclude a party from a hearing, and totally deny him a day in court, and deny him the right to the protection of the United States Constitution?

5. Whether or not jurisdiction vests in the United States District Court to redress the violation of the due process clause of the United States Constitution, and does the United States District Court have jurisdiction thereof?

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

The Constitutional provision of the State of Georgia describing the situation as it relates to Clyde Henley in which an unpardoned, convicted, felon is ineligible to hold public office reads as follows:

> Article 2, Section 2, para. 1, Constitution of the State of Georgia:
>
> "The following classes of persons shall not be permitted to register, vote or hold any office, or appointment of honor, or trust in this State, to-wit:
>
> 1st. Those who shall have been convicted in any court of competent jurisdiction of treason against the State, or embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involv-

ing moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary, unless such persons shall have been pardoned." [Ga. Code Section 2-801].

The Constitutional provision describing the situation in which your petitioner has a right to file Quo Warranto proceeding and to protect the interest of himself as well as citizens of the State provide as follows:

Article 6, Section 3, para. 1. Constitution of the State of Georgia:

"There shall be a judge of the Superior Courts for each judicial circuit, whose term of office shall be for four years AND until his successor is qualified." [emphasis added] Georgia Code Section 2-3801].

Rule 28 U.S.C. §1254 (1):

"Cases in the Courts of Appeals

may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree".

STATEMENT OF THE CASE

This case originated from Quo Warranto proceedings brought by petitioner questioning the eligibility of respondent Clyde Henley to hold public office in the State of Georgia, i.e. Judge of the Superior Courts for the Stone Mountain Judicial Circuit, alleging that the respondent was an unpardoned, convicted felon, as anticipated by the Constitution of the State of Georgia. Petitioner was granted leave to file his quo warranto proceedings by the Superior Court in the State of Georgia, the said leave to file being

duly executed by a judge of the Superior Court, service was perfected upon respondent, but thereafter petitioner's proceedings were dismissed without a hearing, which dismissal was appealed to the Supreme Court of the State of Georgia alleging a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

Prior to petitioner filing his quo warranto proceedings, Holmes Pyles, a citizen and taxpayer of the State of Georgia, had previously filed quo warranto proceedings questioning the eligibility of respondent to hold public office based on a conviction of record of respondent having pled guilty to the offense of robbery in Fulton County, Georgia, in the year of 1941. Holmes Pyles' quo warranto proceeding was

heard in a hearing held in the Superior Court of DeKalb County and a ruling adverse to Holmes Pyles was entered up by the Superior Court. To that ruling an appeal was filed in the Supreme Court of the State of Georgia. During the pendancy of the proceeding by Holmes Pyles, your petitioner filed his quo warranto proceedings. Respondent Clyde Henley, in the Supreme Court of the State of Georgia, made a motion that proceedings by Holmes Pyles and the proceedings by your petitioner be consolidated into one case and alleged that the subject matter was the same and the interest the same of all parties. The Supreme Court of Georgia granted the motion for consolidation even though your petitioner reserved to himself all of his rights, titles and privileges to the Constitution of

the Constitution of the United States and insisted upon his right to his day in court. The Supreme Court of the State of Georgia then affirmed the lower court in the Pyles case and did not allow your petitioner to be heard in an evidentiary hearing allowing him to introduce into evidence other convictions for felonies for which respondent Clyde Henley had plead guilty and had not received a pardon. The total effect of the State proceedings acting under color of state office and state procedures had the effect of and did deprive your petitioner of his due process rights, and made your petitioner the victim of the court proceedings in the case of Holmes Pyles versus respondent Clyde Henley.

It should be pointed out with emphasis that this is not an election

contest, but a proceeding in law based on the Constitution of the United States and the Constitution of the State of Georgia.

In 1968 your petitioner was elected to the office of Judge of the Superior Courts of the Stone Mountain Judicial Circuit, whose term as set forth in the Constitution of the State of Georgia is for four years and until his successor is qualified. In the primaries of 1972, respondent Clyde Henley ran against your petitioner and received more votes than your petitioner thereby having his name placed on the general election ballot as the nominee of the Republican Party of the State of Georgia. In the general election respondent Clyde Henley had opposition and he again received more votes than his opposition in the general election.

Thereafter his eligibility to hold public office was questioned by your petitioner in the form of quo warranto proceedings, which, as stated heretofore, were dismissed without a hearing. The interest of your petitioner and that of Holmes Pyles, a prior petitioner in quo warranto proceedings not being the same, the Constitution of the State of Georgia requiring your petitioner to hold office until his successor is qualified and not merely as a citizen and taxpayer, was and is entitled to a hearing on the merits of his case.

Your petitioner then brought proceedings in the United States District Court for the Northern District of Georgia setting forth the violation by the State of Georgia of the equal protection clause, the Fourteenth Amend-

ment of the United States Constitution, and asked that he be afforded a hearing, and further that respondent Clyde Henley be declared ineligible to hold public office by virtue of his convictions of felonies in the State of Georgia and Florida, without having received pardons thereon. The Judge of the United States District Court for the Northern District of Georgia dismissed your petitioner's pleadings in that court and stated in effect that the District Court did not, in fact, have jurisdiction of the subject matter by virtue of the fact that this matter had been previously adjudicated in the State Courts. To that ruling an appeal was filed in the United States Court of Appeals, Fifth Circuit, which affirmed the District Court's ruling without the benefit of a hearing, and to that affirmation and to

the ruling of the District Court your petitioner now bring this certiorari to the Supreme Court of the United States.

Your petitioner shows that he raised the federal question of the violation of the due process clause of the Constitution of the United States at his first opportunity and to this day has not been afforded a hearing, thereby leaving on the bench of the Superior Court of the State of Georgia a person who affirmed in the year 1971 in court proceedings that he had plead guilty to robbery in 1941, to three counts of larceny in 1945, and to armed robbery in 1947 in the State of Florida. In the year 1972 respondent Clyde Henley filed a motion in the Superior Court of Fulton County, Georgia, asking that his conviction

of 1941 for robbery be set aside and expunged from the record, which motion was granted, but which does not satisfy the constitutional provision regarding a pardon. In the year 1952 respondent Clyde Henley filed a motion in the court in the State of Florida asking that his sentence of 1947 be nolle prossed which was granted, but it should be again pointed out with emphasis that his adjudication of guilt was not nolle prossed, and he is, therefore, still ineligible to hold public office in the State of Georgia by virtue of the conviction for armed robbery in the second degree in the State of Florida.

REASONS FOR GRANTING WRIT

The decision of the Fifth Circuit renders ineffectual the broad Constitutional provision guaranteeing to each

citizen equal protection as guaranteed to that citizen by the Constitution of the United States. It is inconsistent with the decision of this court in Ex Parte Virginia, 100 U.S.339, which states:

"whoever, by virtue of public position under a State government, deprives another of property, life or liberty without due process of law, or denies or takes away equal protection of the laws, violates the constitutional provision; and as he acts in the name and for the State, and is clothed with the State's power, the act is that of the State. This must be so, or the constitution of prohibition has no meaning."

The decision by the Fifth Circuit and the District Court for the Northern District of Georgia flys directly in

the face of the case of Monroe vs. Pape, 365 U. S. 167, on page 168 thereof:

(b) "One of the purposes of this legislation was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, State laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies."

(c) "The federal remedy is supplementary to the state remedy, and the state remedy need not be sought and refused before the federal remedy is invoked."

(d) "Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state

law is action taken under "color of law" state law within meaning of section 1979. United States vs. Classic, 313 U. S. 299; Screws vs. United States, 325 U. S. 91.

These decisions denying to your petitioner a hearing in federal court flys in the face of the case of Gray vs. Sanders, 372 U. S. 368, and in the case of Brinkerhoff-Faris Trust & Sav. Co., vs. Hill, 281 U. S. 673.

More specifically as it relates to your petitioner, the judgments of the District Court and the Fifth Circuit Court is diametrically opposed to the case of Miller vs. Rivers, 31 Fed. Supp. 540:

#3: "Under the laws of Georgia the Chairman of the State Highway Board of Georgia cannot be removed from his office or deprived of the right to

fill said office and exercise the duties thereof and receive the emoluments thereof during his term of office, by the Governor, or by any tribunal, without notice and an opportunity of being heard, and a removal of such officer without such notice and opportunity of being heard would amount to a denial of due process of law and equal protection of the law."

CONCLUSION

The present case is illustrative of the serious and devastating condition now in existence in the United States and the State of Georgia. The "Watergate" problem as it affects attorneys and public office holders who have been convicted or plead guilty to crimes and who are now being forced to resign their positions in the Federal Government, and some of which

are being brought up on disbarment proceedings, affirmatively shows the necessity for the granting of due process to all citizens whatever their standing. To deprive your petitioner his day in court is to say in effect that all of the judicial proceedings now in progress in the courts of this nation and in Congress is all for naught.

For the foregoing reasons this petition for writ of certiorari should be granted.

APPENDIX A

IN THE UNITED STATES COURT OF

APPEALS FOR THE FIFTH CIRCUIT

No. 73-3555
SUMMARY CALENDAR

HOLMES PYLES, for himself and citizens similarly situated; RICHARD A. THIBADEAU, SR.,

Plaintiffs-Appellants

vs.

CLYDE HENLEY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(February 12, 1974)

Before WISDOM, GOLDBERG and GEE,

Circuit Judges

PER CURIAM:

AFFIRMED. See Local Rule 21. [1]

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1973

No. 73-3555
Summary Calendar

D. C. Docket No. CA-18605

HOLMES PYLES, for himself and
citizens similarly situated;
RICHARD A. THIBADEAU, SR.,
Plaintiffs-Appellants,

versus

CLYDE HENLEY,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Georgia

Before WISDOM, GOLDBERG and GEE,
Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for

The Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

February 12, 1974

Issued as Mandate:

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HOLMES PYLES, for himself and citizens similarly situated; RICHARD A. THIBADEAU, SR.	CIVIL ACTION
vs.	
CLYDE HENLEY	NO. 18605

O R D E R

In the fall of 1972 plaintiff herein, Richard A. Thibadeau, Sr. ran for reelection to the position of Judge of Superior Court for the Stone Mountain Judicial Circuit. He was opposed and defeated in that election by defendant herein, Clyde W. Henley. Thereafter Thibadeau and Holmes Pyles brought separate proceedings in quo warranto in the state superior court urging that Henley was not qualified to hold the office of judge under Ga. Code Section 2-801, 34-107, and 89-101. These

sections state, essentially, that no person shall be eligible to hold public office who has been convicted of a felony and who has not been pardoned. Plaintiff Pyles' petition was heard and rejected by Superior Court Judge Claude D. Shaw, from which judgment Pyles appealed to the Georgia Supreme Court. While Pyles' petition was pending before the Supreme Court, Thibadeau was granted leave to file his own quo warranto proceedings against Henley by Superior Court Judge Ray C. Norvell. Judge Norvell apparently had not realized that an identical petition was already pending before the Supreme Court at the time he allowed Thibadeau's petition to be filed, as he vacated his original order on the same day it was entered, saying that

the order allowing the filing of an identical petition was "premature and superfluous." From this vacation by Judge Norvell of his earlier order, Thibadeau appealed.

Subsequently, the Georgia Supreme Court consolidated Pyles' and Thibadeau's appeals for a hearing on the merits. The Court found after a de novo examination of the entire record that although Henley was indicted on a felony charge in 1941, the only charge the Court felt warranted an inquiry, the indictment was nolle prossed by judgment of the Fulton Superior Court prior to the 1972 general election. The Supreme Court agreed with the judgment of the trial court that Henley was not disqualified from holding the public office to which he was elected, and affirmed the deci-

sions of Judges Shaw and Norvell.

Plaintiffs have now brought an action in federal court styled "Quo Warranto Proceedings Petition for Due Process". In this present action plaintiffs allege that they have been denied due process and equal protection of the laws as guaranteed by the Constitutions of the United States and the State of Georgia, and that they have been deprived of their rights under the Georgia Constitution, which states, "No person shall be deprived of the right to prosecute or defend his own cause in any courts of this State, in person, by attorney, or both," Ga. Code Ann. Sec. 2-104; and, "The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging

the duties of one, shall, at the same time, exercise the functions of either of the others, except as herein provided." Ga. Code Ann. Sec. 2-123. In support of these allegations plaintiffs complain that they have not received a fair, unbiased hearing in the Superior and Supreme Courts of Georgia. They argue that the judgments of both courts were rendered without citation to judicial authority and that they were contrary to law. With respect to the Supreme Court, plaintiffs maintain that its failure to rule on the points of law presented in the case constituted in some manner a violation of the separation of powers clause of the Georgia Constitution, quoted above. And plaintiffs argue, finally, that the failure of the Georgia courts to correctly de-

cide the question presented constitutes a denial of equal protection.

Based on their petition for "Quo Warranto" and "Due Process", plaintiffs ask this court to provide the following substantive relief: (1) Set aside the orders of Judges Shaw and Norvell, set aside the ruling of the Supreme Court of Georgia, and declare that Clyde Henley is ineligible to hold public office; (2) Issue a protective order allowing plaintiff Thibadeau to practice law "without waiving any of his rights, title and interest in and to the office of Judge of the Superior Court"; and (3) Declare that Thibadeau is the duly qualified Judge of Superior Courts of the Stone Mountain Judicial Circuit.

Defendant has moved that the action be dismissed for want of jurisdiction of the subject matter, and the motion will be granted.

Plaintiffs allege jurisdiction under 28 U.S.C. Sec. 2201 and 2202. It is elementary, hornbook law, of course, that "the Declaratory Judgment Act is not a grant of jurisdiction to the federal courts. It merely makes available an additional remedy in cases of which they have jurisdiction by virtue of diversity and the requisite amount in controversy, or because of a federal question." C. Wright, Law of Federal Courts, §100 at 449 (2d ed.). Plaintiffs do not allege, and the court does not find, any specific statutory provision creating jurisdiction over plaintiffs' claim. There is no diversity of

citizenship here, and the only conceivable jurisdictional basis is that of "federal question" jurisdiction provided in 28 U.S.C. §1331. Nothing in plaintiffs' allegations, however, support the requisite finding that their claim is one which "arises under the Constitution, laws or treaties of the United States." Plaintiffs claim that the alleged erroneous decisions of the Georgia state courts constitute a denial of due process and equal protection is frivolous and does not raise a substantial federal question. Bell v. Hood, 327 U.S. 678 (1946). As Justice Holmes said in 1907 with respect to a similar claim, "the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an

infraction of the 14th Amendment merely because it is wrong or because earlier decisions are reversed." Patterson v. Colorado, 205 U.S. 454, 461 (1907). And as the Supreme Court stated some forty years later, "We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise every erroneous decision by a state court on state law would come here as a federal constitutional question." Gryger v. Burke, 334 U.S. 728, 731 (1948). See Wood v. Conneaut Lake Park, Inc., 258 F. Supp. 777 (W.D.Pa. 1966), aff'd. 386 F. 2d 121, cert. denied 391 U.S.907. Plaintiffs' allegation that the Georgia Supreme Court's decision somehow violates the Georgia Constitution's separation of powers clause, presents no federal question, even in the unlikely event

that such an allegation could be supported. See Scruggs vs. Henderson,380 F. 2d 981 (6th Cir. 1967.)

In addition, although plaintiffs argue that they are here presenting new claims asserting denial of their rights under the Fourteenth Amendment, the relief they are seeking is essentially the same as that denied by the Supreme Court of Georgia. It is well settled that a federal district court has no appellate jurisdiction to review the decision of a state supreme court. See, e.g., Aris v. Big Ten Taxi Corp., 441 F. 2d 536 (5th Cir. 1971); Battle v. Cherry, 339 F. Supp. 186 (N.D.Ga. 1972). The insertion of conclusory allegations of denial of due process and equal protection in plaintiffs' present complaint will

not confer jurisdiction over the identical case which has been decided by the Supreme Court of Georgia.

For the foregoing reasons, defendant's motion to dismiss is GRANTED, and the above-captioned case is DISMISSED.

So ORDERED this 31 day of August, 1973.

NEWELL EDENFIELD
United States District
Judge

APPENDIX B (page 12)

UNITED STATES DISTRICT COURT
For the
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No.
18605

HOLMES PYLES, for himself and citizens similarly situated; RICHARD A. THIBADEAU, SR.

vs.

CLYDE HENLEY

JUDGMENT

This action came on for consideration before the Court, Honorable Newell Edenfield, United States District Judge presiding, and the issues having been duly considered and a decision having been duly rendered, granting defendant's motion to dismiss,

It is Ordered and Adjudged that plaintiffs' petition be dismissed, and that the defendant, CLYDE HENLEY, recover of plaintiffs, HOLMES PYLES, for himself and citizens similarly situated,

and RICHARD A. THIBADEAU, SR., his

costs of action

dated at Atlanta, Georgia, this 31st

day of May, 1973.

Filed & Entered in
Clerk's office, this
August 31, 1973
BEN H. CARTER, CLERK

BY: Jerry W. Evans
DEPUTY CLERK

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 73-3555

HOLMES PYLES, for himself and citizens similarly situated; RICHARD A. THIBADEAU, SR.,

Plaintiffs-Appellants

versus

CLYDE HENLEY,

Defendant-Appellee

Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION FOR REHEARING

(March 14, 1974)

Before WISDOM, GOLDBERG and GEE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition

for rehearing filed on behalf of RICHARD A. THIBADEAU, SR. in the above entitled and numbered cause be and the same is hereby denied.

APPENDIX D

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

RICHARD A. THIBADEAU, SR.] CASE NO.
vs.] 70985
CLYDE HENLEY]

ORDER TO VACATE AND SET ASIDE PRIOR ORDER GRANTING LEAVE TO FILE QUO WARRANTO

It appearing to the Court that there is now pending for hearing before the Supreme Court of the State of Georgia the case of Holmes Pyles vs. Clyde Henley, a Quo Warranto proceeding appealed by the petitioner from an adverse decision from Judge Claud D. Shaw, Superior Court, Fulton County, and that said case was originally filed out of the same factual situation as the above-styled action;

IT IS CONSIDERED, ORDERED and

ADJUDGED that the Order of the Court dated March 9, 1973, granting leave of the applicant in case number 70985 to file another application for Quo Warranto was premature and superfluous, it is hereby ordered that the said Order granting leave to file said application dated March 9, 1973, is hereby set aside and vacated instanter.

Let a copy of this Order be served upon the petitioner, Richard A. Thibadeau, Sr., and the defendant,Clyde Henley, as by law provided.

SO ORDERED, this 9th day of March, 1973.

Ray C. Norvell
Judge, Superior Court
STONE MOUNTAIN JUDICIAL CIRCUIT

Filed in office
This 9 day of Mar. 1973
Theron Burgess,
Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HOLMES PYLES, for himself and citizens similarly situated; RICHARD A. THIBADEAU, SR.,

Plaintiffs-Appellants

vs:

CLYDE HENLEY,

Defendant-Appellee

All facts as set forth in the within Petition For Certiorari are a part of the record in the United States Court of Appeals for the Fifth Circuit